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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-335

13 **MICHAEL JAMES MARINO**  
14 **1419 6th Street**  
15 **Eureka, CA 95501**

**DEFAULT DECISION AND ORDER**

16 **Registered Nurse License No. 650314**

[Gov. Code, §11520]

17 Respondent.

18 **FINDINGS OF FACT**

19 1. On or about October 26, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs, filed Accusation No. 2013-335 against Michael James Marino (Respondent)  
22 before the Board of Registered Nursing. (A copy of the Accusation is attached as Exhibit A.)

23 2. On or about December 29, 2004, the Board of Registered Nursing (Board) issued  
24 Registered Nurse License No. 650314 to Respondent. The Registered Nurse License expired on  
25 August 24, 2012, and has not been renewed. Renewal of the Registered Nurse License was  
26 denied pursuant to Family Code section 17520.

27 3. Section 2764 of the Code provides, in pertinent part, that the expiration of a license  
28 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the

1 licensee or to render a decision imposing discipline on the license. Under section 2811,  
2 subdivision (b) of the Code, the Board may renew an expired license at any time within eight  
3 years after the expiration.

4 4. Family Code section 17520 provides, in pertinent part, that the Board has the  
5 authority to withhold issuance or renewal of the license of any applicant based on non-  
6 compliance with a court judgment or order for child or family support.

7 5. On or about October 26, 2012, Respondent was served by Certified and First Class  
8 Mail copies of the Accusation No. 2013-335, Statement to Respondent, Notice of Defense,  
9 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
10 and 11507.7) at Respondent's address of record which, pursuant to California Code of  
11 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.  
12 Respondent's address of record was and is:

13 1419 6th Street  
14 Eureka, CA 95501

15 6. Service of the Accusation was effective as a matter of law under the provisions of  
16 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
17 124.

18 7. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
21 of the accusation not expressly admitted. Failure to file a notice of defense shall  
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
23 may nevertheless grant a hearing.

24 8. Respondent failed to file a Notice of Defense within 15 days after service upon him  
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
26 2013-335.

27 9. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the  
hearing, the agency may take action based upon the respondent's express admissions  
or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2013-335, finds that the charges and allegations in Accusation No. 2013-335, are separately and severally, found to be true and correct by clear and convincing evidence.

11. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$985.00 as of November 27, 2012.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Michael James Marino has subjected his Registered Nurse License No. 650314 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the Default Decision Investigatory Evidence Packet in this case:

a. Respondent has subjected his license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that on or about August 1, 1995, in a criminal proceeding entitled *People of the State of California v. Michael Marino*, in San Diego County Superior Court, case number ECR11622, Respondent was convicted on his plea of guilty of violating Penal Code section 459, second degree commercial burglary, a felony, a crime that is substantially related to the qualifications, functions, and duties of a registered nurse.

b. Respondent has subjected his license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that on or about March 7, 2012, in a criminal proceeding entitled *People of the State of California v. Michael James Marino*, in Orange County Superior Court, case number 10NF3598, Respondent was convicted on his plea of guilty of violating Penal Code section 245, subdivision (a)(1), aggravated assault, a felony; Penal Code section 594,

1 subdivisions (a) and (b)(2)(A), vandalism, a misdemeanor; and Vehicle Code section 23152,  
2 subdivision (a), driving under the influence of alcohol/drugs, a misdemeanor. Said crimes are  
3 substantially related to the qualifications, functions, and duties of a registered nurse.

4 c. Respondent has subjected his license to disciplinary action under section 2762,  
5 subdivision (a) of the Code for unprofessional conduct in that on or about October 19, 2010,  
6 Respondent possessed the controlled substance methamphetamine.

7 d. Respondent has subjected his license to disciplinary action under section 2762,  
8 subdivision (b) of the Code for unprofessional conduct in that on or about October 19, 2010,  
9 Respondent was under the influence of the controlled substance methamphetamine.

10 e. Respondent has subjected his license to disciplinary action under section 2762,  
11 subdivision (c) of the Code for unprofessional conduct in that on or about March 7, 2012,  
12 Respondent was convicted of a drug and alcohol-related criminal offense.

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**ORDER**

IT IS SO ORDERED that Registered Nurse License No. 650314, heretofore issued to Respondent Michael James Marino, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MARCH 29, 2013.

It is so ORDERED FEBRUARY 28, 2013.

  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

DOJ Matter ID: SD2012703625

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*  
8

9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-335**

13 **MICHAEL JAMES MARINO**  
14 **1419 6th Street**  
**Eureka, CA 95501**

**A C C U S A T I O N**

15 **Registered Nurse License No. 650314**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about December 29, 2004, the Board of Registered Nursing issued Registered  
24 Nurse License Number 650314 to Michael James Marino (Respondent). The Registered Nurse  
25 License expired on August 24, 2012. Renewal of the Registered Nurse License was denied  
26 pursuant to Family Code section 17520.

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28 ///

## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Family Code section 17520 provides, in pertinent part, that the Board has the authority to withhold issuance or renewal of the license of any applicant based on non-compliance with a court judgment or order for child or family support.

## STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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1           9.    Section 493 of the Code states:

2                Notwithstanding any other provision of law, in a proceeding conducted by a  
3                board within the department pursuant to law to deny an application for a license or to  
4                suspend or revoke a license or otherwise take disciplinary action against a person who  
5                holds a license, upon the ground that the applicant or the licensee has been convicted  
6                of a crime substantially related to the qualifications, functions, and duties of the  
7                licensee in question, the record of conviction of the crime shall be conclusive  
8                evidence of the fact that the conviction occurred, but only of that fact, and the board  
9                may inquire into the circumstances surrounding the commission of the crime in order  
10              to fix the degree of discipline or to determine if the conviction is substantially related  
11              to the qualifications, functions, and duties of the licensee in question.

12              As used in this section, "license" includes "certificate," "permit," "authority,"  
13              and "registration."

14           10.   Section 2761 of the Code states:

15                The board may take disciplinary action against a certified or licensed nurse or  
16                deny an application for a certificate or license for any of the following:

17              (a)   Unprofessional conduct, which includes, but is not limited to, the  
18              following:

19              .....

20              (b)   Procuring his or her certificate or license by fraud, misrepresentation, or  
21              mistake.

22              .....

23              (c)   Making or giving any false statement or information in connection with the  
24              application for issuance of a certificate or license.

25              (f)   Conviction of a felony or of any offense substantially related to the  
26              qualifications, functions, and duties of a registered nurse, in which event the record of  
27              the conviction shall be conclusive evidence thereof.

28              .....

          11.   Section 2762 of the Code states:

              In addition to other acts constituting unprofessional conduct within the meaning  
              of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
              licensed under this chapter to do any of the following:

            (a)   Obtain or possess in violation of law, or prescribe, or except as directed by  
            a licensed physician and surgeon, dentist, or podiatrist administer to himself or  
            herself, or furnish or administer to another, any controlled substance as defined in  
            Division 10 (commencing with Section 11000) of the Health and Safety Code or any  
            dangerous drug or dangerous device as defined in Section 4022.

            (b)   Use any controlled substance as defined in Division 10 (commencing with  
            Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
            device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner

1 dangerous or injurious to himself or herself, any other person, or the public or to the  
2 extent that such use impairs his or her ability to conduct with safety to the public the  
practice authorized by his or her license.

3 (c) Be convicted of a criminal offense involving the prescription, consumption,  
4 or self-administration of any of the substances described in subdivisions (a) and (b) of  
this section, or the possession of, or falsification of a record pertaining to, the  
5 substances described in subdivision (a) of this section, in which event the record of  
the conviction is conclusive evidence thereof.

6 . . . .

7 12. Section 2765 of the Code states:

8 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
9 made to a charge substantially related to the qualifications, functions and duties of a  
registered nurse is deemed to be a conviction within the meaning of this article. The  
10 board may order the license or certificate suspended or revoked, or may decline to  
issue a license or certificate, when the time for appeal has elapsed, or the judgment of  
11 conviction has been affirmed on appeal or when an order granting probation is made  
suspending the imposition of sentence, irrespective of a subsequent order under the  
12 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his  
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of  
13 guilty, or dismissing the accusation, information or indictment.

#### 14 REGULATORY PROVISIONS

15 13. California Code of Regulations, title 16, section 1444, states:

16 A conviction or act shall be considered to be substantially related to the  
17 qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
18 manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

19 (a) Assaultive or abusive conduct including, but not limited to, those violations  
20 listed in subdivision (d) of Penal Code Section 11160.

21 (b) Failure to comply with any mandatory reporting requirements.

22 (c) Theft, dishonesty, fraud, or deceit.

23 (d) Any conviction or act subject to an order of registration pursuant to Section  
290 of the Penal Code.

24 14. California Code of Regulations, title 16, section 1445 states:

25 . . . .

26 (b) When considering the suspension or revocation of a license on the grounds  
27 that a registered nurse has been convicted of a crime, the board, in evaluating the  
rehabilitation of such person and his/her eligibility for a license will consider the  
28 following criteria:

- 1 (1) Nature and severity of the act(s) or offense(s).  
2 (2) Total criminal record.  
3 (3) The time that has elapsed since commission of the act(s) or offense(s).  
4 (4) Whether the licensee has complied with any terms of parole, probation,  
5 restitution or any other sanctions lawfully imposed against the licensee.  
6 (5) If applicable, evidence of expungement proceedings pursuant to Section  
7 1203.4 of the Penal Code.  
8 (6) Evidence, if any, of rehabilitation submitted by the licensee.

#### 8 COSTS

9 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
10 administrative law judge to direct a licensee found to have committed a violation or violations of  
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
12 enforcement of the case.

#### 13 DRUG

14 16. Methamphetamine is a Schedule II controlled substance as designated by Health and  
15 Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and  
16 Professions Code section 4022.

#### 17 FIRST CAUSE FOR DISCIPLINE

18 (August 1, 1995 Criminal Conviction for Second Degree

19 Commercial Burglary on June 15, 1995)

20 17. Respondent has subjected his license to disciplinary action under sections 490 and  
21 2761, subdivision (f) of the Code in that he was convicted of a crime that is substantially related  
22 to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
23 follows:

24 a. On or about August 1, 1995, in a criminal proceeding entitled *People of the*  
25 *State of California v. Michael Marino*, in San Diego County Superior Court, case number  
26 ECR11622, Respondent was convicted on his plea of guilty of violating Penal Code section 459,  
27 second degree commercial burglary, a felony.

28 ///

1           b. As a result of the conviction, on or about August 1, 1995, Respondent was  
2 granted three years formal probation, and ordered to serve 180 days in jail, with credit for 72  
3 days. Respondent was further ordered to complete a counseling program, abstain from using or  
4 possessing controlled substances, submit to chemical tests to detect controlled substances, submit  
5 to a Fourth Amendment waiver, and pay fees, fines, and restitution.

6                                   **SECOND CAUSE FOR DISCIPLINE**

7                   **(March 7, 2012 Criminal Convictions for Aggravated Assault, Vandalism,**  
8                   **and Driving Under the Influence on October 19, 2010)**

9           18. Respondent has subjected his license to disciplinary action under sections 490 and  
10 2761, subdivision (f) of the Code in that he was convicted of crimes that are substantially related  
11 to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
12 follows:

13           a. On or about March 7, 2012, after multiple failures to appear at a criminal  
14 proceeding entitled *People of the State of California v. Michael James Marino*, in Orange County  
15 Superior Court, case number 10NF3598, Respondent was convicted on his plea of guilty of  
16 violating Penal Code section 245, subdivision (a)(1), aggravated assault, a felony; Penal Code  
17 section 594, subdivisions (a) and (b)(2)(A), vandalism, a misdemeanor; and Vehicle Code section  
18 23152, subdivision (a), driving under the influence of alcohol/drugs, a misdemeanor. The court  
19 dismissed additional counts of violating Health and Safety Code sections 11377, subdivision (a),  
20 possession of methamphetamine; and 11550, subdivision (a), under the influence of  
21 methamphetamine, pursuant to a plea agreement. In Respondent's plea agreement, he stated: "In  
22 Orange County, California, on October 19, 2010, I willfully and unlawfully possessed a useable  
23 quantity of methamphetamine, drove a care while under the influence of methamphetamine, and  
24 maliciously caused more than \$400 damage to the property of Kenneth V. by ramming my car  
25 into his vehicle."

26           b. As a result of the convictions, on or about March 7, 2012, Respondent was  
27 granted three years formal probation, and ordered to serve 90 days in the Orange County Jail,  
28 with credit for 62 days, plus an additional eight days of incarceration in lieu of paying a \$390

1 fine. Respondent was further ordered to complete a three-month Level 1 First Offender Alcohol  
2 Program, attend a MADD Victim Impact Panel session, and pay fees, fines, and restitution.

3 c. The facts that led to the conviction are that on or about the morning of October  
4 19, 2010, a patrol officer with the Anaheim Police Department was dispatched to investigate a  
5 collision. The reporting party/victim stated that Respondent had crashed into his vehicle.  
6 Respondent told the officers that he intentionally crashed into the victim in order to get the  
7 attention of law enforcement. Respondent stated that he was being followed by drug gangsters  
8 and he wanted to be taken to jail so that he could talk to the FBI. The officer noted that  
9 Respondent exhibited the symptoms of being under the influence of a central nervous system  
10 stimulant: he spoke rapidly and acted nervous, his mouth was dry and he licked his lips, his pulse  
11 was 120 beats per minute, and he had dilated pupils. Respondent admitted to the officer that he  
12 had consumed methamphetamine approximately three hours earlier. After receiving written  
13 consent to search his vehicle, Respondent directed the officer to a small plastic baggie containing  
14 white powder in the vehicle's center console. The 1.6 grams of white powder subsequently tested  
15 positive for methamphetamine. Respondent was arrested.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Illegal Possession of a Controlled Substance)**

18 19. Respondent has subjected his license to disciplinary action under section 2762,  
19 subdivision (a) of the Code for unprofessional conduct in that on or about October 19, 2010, as  
20 described in paragraph 18, above, Respondent possessed the controlled substance  
21 methamphetamine.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Under the Influence of a Controlled Substance)**

24 20. Respondent has subjected his license to disciplinary action under section 2762,  
25 subdivision (b) of the Code for unprofessional conduct in that on or about October 19, 2010, as  
26 described in paragraph 18, above, Respondent was under the influence of the controlled substance  
27 methamphetamine.

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Drug and Alcohol-Related Criminal Convictions)**

3 21. Respondent has subjected his license to disciplinary action under section 2762,  
4 subdivision (c) of the Code for unprofessional conduct in that on or about March 7, 2012, as  
5 described in paragraph 18, above, Respondent was convicted of a drug and alcohol-related  
6 criminal offense.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Making False Statement of Fact on Application for Licensure/Obtaining License by Fraud)**

9 22. Respondent has subjected his license to disciplinary action under section 2762,  
10 subdivisions (b) and (e) of the Code for unprofessional conduct in that Respondent made a false  
11 statement of fact on his application for licensure, thereby obtaining his license by fraud. The  
12 circumstances are as follows:

13 a. On or about September 3, 2004, Respondent signed his Application for  
14 Licensure by Endorsement certifying under penalty of perjury under the laws of the State of  
15 California, that all information provided in the application was true, correct and complete.  
16 Respondent was warned that providing false information or omitting required information is  
17 grounds for denial of licensure or license revocation in California.

18 b. The license application asked the following:

19 Have you ever been convicted of any offense other than minor traffic  
20 violations? If yes, explain fully as described in the applicant instructions.  
21 Convictions must be reported even if they have been expunged under Penal Code  
22 Section 1203.4 or if a diversion program has been completed under the Penal Code or  
23 Article 5 of the Vehicle Code. Traffic violations involving driving under the  
24 influence, injury to persons or providing false information must be reported. The  
25 definition of conviction includes convictions of following a plea of nolo contendere  
26 (no contest), as well as pleas or verdicts of guilty. YOU MUST INCLUDE  
27 MISDEMEANOR AS WELL AS FELONY CONVICTIONS.

28 c. In response to the question, Respondent marked the box "NO." Respondent  
failed to disclose his August 1, 1995 criminal conviction for violating Penal Code section 459,  
second degree commercial burglary, a felony, even though the conviction met all criteria for  
disclosure. This conviction is detailed in the First Cause for Discipline, paragraph 17, above, and  
is incorporated herein by reference.

1 **PRAYER**

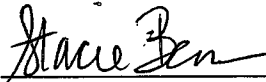
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 650314, issued to  
5 Michael James Marino;

6 2. Ordering Michael James Marino to pay the Board of Registered Nursing the  
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.  
10  
11

12 DATED: OCTOBER 26, 2012



13 LOUISE R. BAILEY, M.ED., RN  
14 for Executive Officer  
15 Board of Registered Nursing  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant  
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